

NOT FOR PUBLICATION - for upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ROY TRANTHAM,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1998-140 M/R
)	
FORD MOTOR CO. and FORD MOTOR CO.)	
CARIBBEAN, INC.,)	
)	
Defendants.)	

ATTORNEYS:

Lee J. Rohn, Esq.
St. Croix, U.S.V.I.
For the plaintiff,

Andrew C. Simpson, Esq.
St. Croix, U.S.V.I.
For the defendants.

MEMORANDUM

Moore, J.

Roy Trantham seeks unspecified damages against defendants Ford Motor Co. and Ford Motor Company Caribbean, Inc. [collectively "Ford"] for defamation (Count I), tortious interference with contractual relations (Count II), intentional infliction of emotional distress (Count III), and negligent infliction of emotional distress (Count IV). (See Amended Complaint, filed Oct. 29, 1999 (Docket No. 56).) Ford seeks summary judgment on Count I of the complaint. For the reasons

stated below, the Court will deny the defendants' motion.

Summary judgment will be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue respecting any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); see *Sharpe v. West Indian Co.*, 118 F. Supp. 2d 646 (D.V.I. 2000). The nonmoving party may not rest on mere allegations or denials, but must establish by specific facts that there is a genuine issue for trial from which a reasonable juror could find for the nonmoving party. See *Saldana v. Kmart Corp.*, 42 V.I. 358, 360-61, 84 F. Supp. 2d 629, 631-32 (D.V.I. 1999). Only evidence admissible at trial shall be considered and the Court must draw all reasonable inferences therefrom in favor of the nonmovant. See *id.*

The plaintiff was employed as the manager of Armstrong Motors from June 1973 until September 1994. On May 24, 1996, a Ford Motor Company Caribbean district manager sent a letter to Robert Armstrong, owner of Armstrong Motors, after Ford conducted an audit of the dealership. (See Pl.'s Mem. Opp. Summ. J. Ex. 1. ["Pl.'s Mem."]) The stated purpose of the letter was "to advise [Mr. Armstrong] of the findings of the audit at [his] dealership," and went on to state, in relevant part:

The following market pricing discounts and fleet price concessions were given to Armstrong Ford during the period noted below:

<u>Model Year</u>	<u>Revenue Reductions</u>	<u>Price</u>
<u>Concessions</u>		
1993-1996	\$1,505,189	\$1,160,117
Grand Total		\$2,665,306

The Grand Total amount of \$2,665,306 represents the intended chargeback by the Company to Armstrong Ford for incentives which we *believe were either applied improperly or fraudulently by the management of your dealership.*

(See *id.* (emphasis added).)

The plaintiff alleges that the letter contained false and defamatory statements accusing him of fraudulent practices that were ultimately intended to force the owners of Armstrong Motors to sell the dealership to Ford at a reduced price. Ford, on the other hand, asserts that it is entitled to summary judgment on the grounds that (1) the letter "does not express a fact or opinion" and (2) the letter does not attribute fraudulent activities to the plaintiff. (See Defs.' Mem. Supp. Summ. J. at 3.) Viewing the evidence presented in the light most favorable to the plaintiff, the Court concludes that there remain issues of material fact to be resolved by a jury.

Statement of Fact or Opinion

A defamatory communication may consist of a statement of fact, see RESTATEMENT (SECOND) OF TORTS § 565, or a statement of opinion, if that opinion implies the allegation of defamatory

facts as its basis, see *id.* § 566. "To be [a] defamatory [statement of fact], it is not necessary that the accusation or other statement be by words. It is enough that the communication is reasonably capable of being understood as charging something defamatory." See *id.* § 565 cmt. b. An expression of opinion occurs either "when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character," see *id.* § 566 cmt. b, or when it is "apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant or assumed to exist by the parties to the communication," see *id.* It is the function of the court to determine whether an opinion is capable of bearing a defamatory meaning because it implies allegations of defamatory facts, while it is the function of the jury to decide whether that defamatory meaning was attributed to the opinion by the recipient of the communication. See *id.* § 614.

The Court cannot find as a matter of law that the letter does not contain either a statement of fact or a statement of opinion capable of bearing a defamatory meaning. The letter states that Ford "believe[d]" that over \$2.5 million in incentives and price concessions were "either applied improperly or fraudulently by the management of your dealership," and that it intended to recoup that money in the form of "chargebacks"

against the dealership. As best stated in the comments to the Restatement, "to say of a person that he is a thief without explaining why, may, depending upon the circumstances, be found to imply the assertion that he has committed acts that come within the common connotation of thievery." *Id.* § 566 cmt. b. Here, Ford states its belief that the management of Armstrong Motors fraudulently applied over \$2.5 million in incentives and concessions, yet it doesn't explain why or how. A defamatory communication is defined as one that "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." RESTATEMENT § 559. Even if the statement does not outright accuse the plaintiff of criminality, a reasonable factfinder could find that the statement is defamatory.

Misconduct Attributable to Plaintiff

The remaining question is whether the reference to improper or fraudulent conduct of the management of Armstrong Motors can be construed as attributing misconduct to Roy Trantham. Ford contends that it cannot be so construed because he only worked for Armstrong Motors until September 1994, while the letter purportedly addresses the period from 1993 to 1996. This position is belied by the evidence, however. Before writing the letter, Ford visited the dealership and spoke with Robert Armstrong, Jr. and his father, Robert Armstrong, Sr. (See Pl.'s

Mem. Ex. 10, at 2.) Ford's own internal communications after the visit indicate that neither Ford nor the Armstrongs considered anybody but Roy Trantham to be the "management" responsible for the fraudulent transactions and potential million-dollar chargeback. (See *id.*; see also *id.* Ex. 20 (Kershaw Dep. at 41-42).)

As set forth in section 564 of the Restatement, "[a] defamatory communication is made concerning the person to whom its recipient correctly, or mistakenly but reasonably, understands that it was intended to refer." RESTATEMENT § 564. As the comments elaborate, "[i]t is not necessary that the plaintiff be designated by name; it is enough that there is such a description or reference to him that those who hear or read reasonably understand the plaintiff to be the person intended." *Id.* cmt. b. Even assuming, *arguendo*, that Ford intended to refer to the group of persons making up the "management" and not to the plaintiff individually, the jury could reasonably find that the recipient of the letter, Mr. Armstrong, understood that the letter particularly referred to the plaintiff. See RESTATEMENT § 564A.¹ The defendants are not entitled to judgment as a matter

¹ Section 564A provides:

One who publishes a defamatory matter concerning a group or class of persons is subject to liability to an individual member of it if . . .

(a) the group or class is so small that the

(continued...)

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of law.

For the foregoing reasons, the Court will deny Ford's motion for summary judgment. An appropriate order follows.

ENTERED this 12th day of April, 2001.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

¹(...continued)

matter can reasonably be understood to refer to the member, or . . .

(b) the circumstances of publication reasonably give rise to the conclusion that there is particular reference to the member.

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Andrew C. Simpson, Esq.
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For the defendants.

ORDER

For the reasons set forth in the accompanying memorandum of even date, it is hereby

ORDERED that the defendants' motion for summary judgment on Count I (Docket No. 69) is **DENIED**.

ENTERED this 12th day of April, 2001.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

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ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____
Deputy Clerk

Copies to:

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